

Appl. No. 10/817,255
Amdt. dated December 4, 2006
Reply to Office Action of October 4, 2006
Attorney Docket 17210

REMARKS/ARGUMENTS

Claims 1-3 and 5-8 are currently pending for examination. Claims 1, 2, and 8 are presently amended. Claim 9 has been cancelled. The specification has been amended to include reference to applicant's related application that was co-pending and has since issued. No new matter has been added.

Rejection of Claims 1-8 under 35 U.S.C. 112

Claims 1-3 and 5-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 has been amended to remove one of the transitional phrases, "comprising", thus clarifying the applicants intention of claiming an improvement to a known bale wagon.

Claim 2 has been amended to remove the phrase "may be" which has been replaced with "are".

Claim 8 has been amended to correct the antecedent basis problem indicated by the Examiner.

Withdrawal of the rejection is respectfully requested.

Rejection of Claims 1-3, 5 and 7 under 35 U.S.C. 102

Claims 1-3, 5 and 7 stand rejected under 35 U.S.C. 102(b) as being anticipated by Severeid (US 5,333,693 A).

In order for a reference to be an anticipatory reference, the reference must disclose each and every element of the claimed invention. It is respectfully submitted that Severeid does not teach or suggest all the elements recited in the claims.

Severeid teaches a tractor mounted implement for stump removal and makes no mention of bale stacking or hauling. Conversely, the present invention, particularly as claimed in Claim 1, describes an improvement to a bale wagon, a piece of agricultural equipment well known by those in the art as evidenced by the listing of bale wagon related patents listed in the specification of this application.

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Severeid fails to disclose a "hale wagon comprising a load bed, a crossbar movable along the load bed, and tines attached to the movable crossbar" which forms the basis for the improvement described in Claim 1.

The examiner has stated that the body of claim 1 does not depend on the preamble for completeness. Applicant respectfully disagrees. The body of Claim 1 clearly relies on the structure recited in the preamble (which the cited reference of Severeid clearly fails to disclose as previously stated) as claim 1, in-part, claims "attaching the tines to the movable crossbar such that the tines are pivotally adjustable to form a tine tilt angle measured between an essentially vertical surface of the tines and the load bed" (emphasis added). Severeid clearly fails to teach such a limitation as no movable crossbar such as described in Claim 1 is taught by Severeid.

Additionally, the cited reference of Severeid deals with a tractor mounted implement for pulling tree stumps and the like as previously discussed while the present invention deals with hale wagons, two completely separate areas of art. As such, there is no motivation to combine the teaching of Severeid with a known hale wagon to render the present invention obvious as suggested by the examiner in the last sentence of section (V)(1) of the present amendment.

For at least these reasons, Claim 1 should be allowed over the cited art. Claims 2, 3 and 5-7 depend from Claim 1 and should be allowed over the cited art for at least the same reason as Claim 1. Withdrawal of the rejection is respectfully requested.

Rejection of Claim 6 under 35 U.S.C. 103(a)

Claim 6 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Severeid.

In order to establish a *prima facie* case of obviousness, three criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the applied reference must teach or suggest all the claim limitations (See MPEP §2143).

It is respectfully submitted that the Office Action does not meet the criteria for establishing a *prima facie* case of obviousness. Claim 6 depends from Claim 1, which as

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previously discussed is believed to be allowable over the cited art as the cited art fails to teach or suggest all of the cited limitations of the claim. Additionally, as previously discussed, Severeid teaches a tractor mounted implement for stump removal and makes no mention of bale stacking or hauling thus giving no suggestion or motivation to one skilled in the art to apply any potential teachings to a bale wagon. As such, Severeid at minimum fails to teach or disclose a "load bed", one of the measuring point from which the specified line "tilt angle" of Claim 6 is measured.

For at least these reasons, Claim 6 should be allowed over the cited art. Withdrawal of the rejection is respectfully requested.

Rejection of Claim 8-9 under 35 U.S.C. 103(a)

Claims 8-9 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Nulle (US 5,168,817 A) in view of Maclay (US 6,328,520 B1).

In order to establish a *prima facie* case of obviousness, three criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the applied reference must teach or suggest all the claim limitations (See MPEP §2143).

It is respectfully submitted that the Office Action does not meet the criteria for establishing a *prima facie* case of obviousness.

The office action provides:

"MACLAY demonstrates that it is well-known to form stacks of hay bales having various lean angles (cf 13 & 16) selected by pivotally adjusting tines (127)."

Applicant respectfully disagrees. Maclay appears to teach a truck-mounted tilt bed device for hauling and unloading large bales of hay. The device, particularly as shown in Figs. 13 & 16 referenced by the Examiner, clearly shows tines 127. "The tines 127 are so configured as to include an outwardly curved portion 131, and an inwardly directed arm 132 and a bale engaging point 133 designed to pierce the surface of the bale" (col 9, lines 64-67, Figure 14). Tines 127 are clearly oriented to engage the sides of the bales. Adjustment of the tines 127 merely adjusts the grip of the tines on the bale and does not affect the tilt angle of

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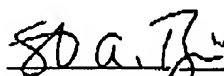
the unloaded bales. Instead, Maclay teaches that the angle of beam 106 determines the angle of the unloaded bales.

Conversely, the present invention as claimed in Claim 8 claims, in-part, a method of "unloading a second load of bales from the same wagon at a different tilt angle selected by pivotally adjusting the tines on said bale wagon" (emphasis added). As the cited references of Maclay and Nulle fail to at least teach or suggest a method wherein the tilt angle is selected by pivotal adjustment of tines as claimed in Claim 8, Claim 8 should be allowed over the cited art. Claim 9 has been cancelled thus obviating the need to address its rejection. Withdrawal of the rejection is respectfully requested.

No fee is believed due in connection with this Amendment. However, if the Commissioner determines that a fee is due, he is authorized to charge the fee to Deposit Account No. 14-0780.

In view of the above remarks, it is believed that the application is in condition for allowance. Accordingly, an early Notice of Allowance is respectfully requested.

Respectfully submitted,



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